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Gerald McGhee

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GERALD MCGHEE, an individual,

Plaintiff,

vs.

I.C. SYSTEM, INC.

Defendant.

Case No.: '13CV0909 MMAMDD

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

INTRODUCTION

1. This is an action for damages brought by an individual consumer against Defendant for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"); the California Rosenthal Act, Civil Code § 1788

1 *et seq.* (“Rosenthal Act”), both of which prohibit debt collectors from
2 engaging in abusive, deceptive, and unfair practices.

- 3 2. Any violations by Defendant were knowing, willful, and intentional, and
4 Defendant did not maintain procedures reasonably adapted to avoid any such
5 violation.

6 **JURISDICTION AND VENUE**

- 7 3. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §
8 1337. Supplemental jurisdiction exists for the state law claims pursuant to
9 28 U.S.C. § 1367.
10 4. Because Defendants do business within the State of California, personal
11 jurisdiction is established.
12 5. Venue is proper pursuant to 28 U.S.C. 1391.

13 **PARTIES**

- 14 6. Plaintiff, GERALD MCGHEE, (“Plaintiff”), is a natural person residing in
15 the State of California.
16 7. Defendant I.C. SYSTEM, INC., (“Defendant”), is a company doing business
17 collecting debts in California operating from an address at 444 HIGHWAY
18 96 EAST, ST. PAUL, MN 55127-2557.
19 8. Defendant is engaged in the collection of debts from consumers using the
20 mail and telephone and regularly attempt to collect consumer debts alleged
21 to be due to another.
22 9. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. §
23 1692a(6), and by the Rosenthal Act, California Civil Code 1788.2(c).
24 10. Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. 1692a(3).
25 11. Plaintiff is a “debtor” as defined by the Rosenthal Act, California Civil Code
26 1788.2(h).

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FACTUAL ALLEGATIONS

12. Sometime before July 9, 2012, Plaintiff is alleged to have incurred certain financial obligations.
13. These financial obligations were primarily for personal, family or household purposes and are therefore a “debt” as that term is defined by 15 U.S.C. §1692a(5).
14. The purported debt which Defendant attempted to collect from Plaintiff was a “consumer debt” as defined by the Rosenthal Act, California Civil Code 1788.2(f).
15. Sometime thereafter, but before July 9, 2012, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt.
16. Subsequently, but before July 9, 2012, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.
17. On or about July 10, 2012, Defendant telephoned Plaintiff in an attempt to collect an alleged debt.
18. During the July 10, 2012 telephone call from Defendant, Plaintiff explained to Defendant that Plaintiff did not owe the money, that he disputes the debt, and told Defendant not to call Plaintiff on the telephone again.
19. Thereafter, Plaintiff received numerous telephone calls from Defendant.
20. On multiple subsequent occasions, Plaintiff again stated that he did not owe the alleged debt, that he disputes the debt, and demanded Defendant cease its calls to Plaintiff.
21. Despite Plaintiff’s repeated assertions that Plaintiff does not owe the debt, and his demands that Defendant cease its telephone calls to Plaintiff, Defendant continued calling Plaintiff on the telephone almost daily, often multiple times in a single day, attempting to collect the alleged debt.

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- 1 22. Each telephone is a “communication” as 15 U.S.C. §1692a(2) defines that
2 term, and a “debt collection” as that phrase is defined by Cal. Civ. Code §
3 1788.2(b).
- 4 23. By engaging in the above conduct, Defendant violated the language in 15
5 U.S.C § 1692d by engaging in conduct, the natural consequence of which is
6 to harass, oppress, or abuse a person in connection with the collection of a
7 debt.
- 8 24. Through this conduct, Defendant caused a telephone to ring or engaged a
9 person in telephone conversations repeatedly or continuously with intent to
10 annoy, abuse, or harass any person at the called number. Consequently,
11 Defendant violated 15 U.S.C. § 1692d(5).
- 12 25. Without the prior consent of the consumer given directly to the Defendant or
13 the express permission of a court of competent jurisdiction, Defendant
14 communicated with the consumer in connection with the collection of a debt
15 at an unusual time or place or a time or place known or which should be
16 known to be inconvenient to the consumer. Consequently, Defendant
17 violated 15 U.S.C. § 1692c(a)(1).
- 18 26. Through this conduct, Defendant caused a telephone to ring repeatedly or
19 continuously to annoy the person called. Consequently, Defendant violated
20 Cal. Civ. Code § 1788.11(d).
- 21 27. Through this conduct, Defendant communicated, by telephone or in person,
22 with Plaintiff with such frequency as to be unreasonable and to constitute an
23 harassment to Plaintiff under the circumstances. Consequently, Defendant
24 violated Cal. Civ. Code § 1788.11(e).
- 25 28. Defendant failed within five days after its initial communication with
26 Plaintiff, to provide written notification containing a statement that unless
27 Plaintiff, within thirty days after receipt of that notice, disputed the validity
28 of the debt, or any portion thereof, Defendant would assume the debt was

1 valid, or failed within five days after its initial communication with Plaintiff
2 to provide a written notice containing a statement that if Plaintiff notified
3 Defendant in writing, within the thirty-day period that the debt, or any
4 portion thereof, was disputed, Defendant would obtain verification of the
5 debt or a copy of a judgment against Plaintiff and a copy of such verification
6 or judgment would be mailed to Plaintiff by Defendant and that Defendant
7 would provide Plaintiff with the name and address of the original creditor.
8 This omission by Defendant violated 15 U.S.C. § 1692g.

9 29. Defendant failed within five days after its initial communication with
10 Plaintiff, to provide written notification containing a statement that included
11 the amount of the debt. This omission by Defendant violated 15 U.S.C. §
12 1692g.

13 30. Defendant failed within five days after its initial communication with
14 Plaintiff, to provide written notification containing a statement that included
15 the name of the creditor to whom the debt is owed. This omission by
16 Defendant violated 15 U.S.C. § 1692g.

17 31. Defendant failed within five days after its initial communication with
18 Plaintiff, to provide written notification containing a statement that included
19 a statement that unless the consumer, within thirty days after receipt of the
20 notice, disputes the validity of the debt, or any portion thereof, the debt will
21 be assumed to be valid by the debt collector. This omission by Defendant
22 violated 15 U.S.C. § 1692g.

23 32. Because Defendant violated the language in 15 U.S.C. § 1692c, d and g,
24 Defendant also violated Cal. Civ. Code § 1788.17 as it incorporates 15
25 U.S.C. § 1692c, d and g.

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1 33. Plaintiff is 84 years old, a senior citizen within the meaning of California
2 Civ. Code § 3345 and as a consequence of Defendant's wrongful conduct,
3 Plaintiff is entitled to treble damages imposed by the trier of fact pursuant to
4 Cal. Civ. Code § 3294.

5 **CAUSES OF ACTION**

6 **COUNT I**

7 **FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**

8 **15 U.S.C. §§ 1692 ET SEQ.**

9 34. Plaintiff repeats, re-alleges, and incorporates by reference, all other
10 paragraphs. The foregoing acts and omissions constitute numerous and
11 multiple violations of the FDCPA, including but not limited to each and
12 every one of the above cited provisions of the FDCPA, 15 U.S.C. § 1692 et
13 seq.

14 35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
15 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages
16 in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
17 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3)
18 from Defendant.

19 36. Plaintiff is 84 years old, a senior citizen within the meaning of California
20 Civ. Code § 3345 and as a consequence of Defendant's wrongful conduct,
21 Plaintiff is entitled to treble damages imposed by the trier of fact pursuant to
22 Cal. Civ. Code § 3294.

23 **COUNT II**

24 **ROSENTHAL FAIR DEBT COLLECTIONS PRACTICES ACT**

25 **(ROSENTHAL ACT)**

26 **CAL. CIV. CODE §§ 1788-1788.32**

27 37. Plaintiff repeats, re-alleges, and incorporates by reference, all other
28 Paragraphs.

1 38. The foregoing acts and omissions constitute numerous and multiple
2 violations of the Rosenthal Act, including but not limited to each and every
3 one of the above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§
4 1788-1788.32.

5 39. As a result of each and every violation of the Rosenthal Act, Plaintiff is
6 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);
7 statutory damages for a knowing or willful violation in the amount up to
8 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable
9 attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from
10 Defendant.

11 40. Plaintiff is 84 years old, a senior citizen within the meaning of California
12 Civ. Code § 3345 and as a consequence of Defendant's wrongful conduct,
13 Plaintiff is entitled to treble damages imposed by the trier of fact pursuant to
14 Cal. Civ. Code § 3294.

15 **PRAYER FOR RELIEF**

16 41. WHEREFORE, Plaintiff prays that judgment be entered against Defendant,
17 and Plaintiff be awarded damages from Defendant, as follows:

- 18 • An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- 19 • An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C.
20 § 1692k(a)(2)(A);
- 21 • An award of costs of litigation and reasonable attorney's fees, pursuant to
22 15 U.S.C. § 1692k(a)(3);
- 23 • An award of actual damages pursuant to Cal. Civ. Code § 1788.30(a);
- 24 • An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
25 § 1788.30(b);
- 26 • An award of costs of litigation and reasonable attorney's fees, pursuant to
27 Cal. Civ. Code § 1788.30(c);
- 28 • Treble damages pursuant to Civ. Code § 3345; and

- Any other relief that the court deems proper.

42. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

LAGUARDIA LAW

Dated: April 9, 2013

By: s/Eric A. LaGuardia
ERIC A. LAGUARDIA
Attorney for Plaintiff,
Gerald McGhee